

STATE OF MICHIGAN
COURT OF APPEALS

BERNADETTE MARIE CHRISTIANA,

Plaintiff/Counterdefendant-
Appellant,

v

GERALD CLETUS CHRISTIANA,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED

May 26, 2005

No. 251792

Wayne Circuit Court

LC No. 02-221239-DO

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals the trial court's spousal support order and its denial of her request for attorney fees. We reverse the provision of the trial court's order that rendered plaintiff's spousal support award nonmodifiable, but affirm in all other respects.

A. Nonmodifiable Spousal Support

Plaintiff correctly asserts that the trial court erred by ordering nonmodifiable spousal support. Though plaintiff failed to file a transcript of the trial court's decision regarding spousal support, as required under MCR 7.210(B)(1)(a), we decide this issue because the trial court's order provides a sufficient basis for this Court's review. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995); *Butt v Giammariner*, 173 Mich App 319, 323; 433 NW2d 360 (1988).

This issue requires us to interpret MCL 552.28. This Court reviews issues of statutory interpretation de novo. *Franchino v Franchino*, 263 Mich App 172, 183; 687 NW2d 620 (2004). When interpreting statutory language, courts must ascertain the legislative intent that may reasonably be inferred from the words in the statute. *Id.* When the Legislature has unambiguously conveyed its intent, the statute speaks for itself and judicial construction is neither necessary nor permitted. *Id.* MCL 552.28 provides:

On petition of either party, after a judgment for alimony or other allowance for either party or a child, or after a judgment for the appointment of trustees to receive and hold property for the use of either party or a child, and subject to section 17, the court may revise and alter the judgment, respecting the

amount or payment of the alimony or allowance, and also respecting the appropriation and payment of the principal and income of the property held in trust, and may make any judgment respecting any of the matters that the court might have made in the original action.

In *Staple v Staple*, 241 Mich App 562, 573; 616 NW2d 219 (2000), this Court interpreted this provision and stated that “[t]his statute unambiguously gives either party to an alimony judgment the right to petition the court to modify an alimony provision” The Court held that, although parties may waive this statutory right to seek modification of alimony, agreements waiving this right must unambiguously show that the parties “(1) forgo their statutory right to petition the court for modification and (2) agree that the alimony provision is final, binding, and nonmodifiable.” *Id.* at 578, 581.

In *Gates v Gates*, 256 Mich App 420, 433; 664 NW2d 231 (2003), this Court reiterated the principle announced in *Staple*. In *Gates*, the defendant argued that the trial court erred by awarding nonmodifiable spousal support. *Id.* Although this Court disagreed with the defendant that the trial court intended the award to be nonmodifiable, *id.* at 433-434, this Court stated:

In *Staple*, *supra* at 569, this Court made it clear that “MCL 552.28 . . . will always apply to any alimony arrangement adjudicated by the trial court when the parties are unable to reach their own agreement.”

Thus, under both *Staple*, *supra*, and MCL 552.28, because the spousal-support provision of the divorce judgment resulted from the trial court’s disposition rather than agreement of the parties, the judgment may not be interpreted to preclude defendant from seeking to continue spousal support, or, in other words, modify the spousal support award [*Id.* at 433.]

Here, because the parties could not reach an agreement regarding spousal support, the trial court adjudicated this issue. Accordingly, under the unambiguous language of MCL 552.28, plaintiff has a statutory right to seek modification of the alimony award. *Gates*, *supra* at 433; *Staple*, *supra* at 562, 569. The trial court therefore erred by ordering that the spousal support award was nonmodifiable.

B. Spousal Support and Attorney Fees

Also, plaintiff says that the trial court erred by awarding \$500 monthly spousal support for a period of four years and by denying her request for attorney fees. Plaintiff’s failure to file the transcript of the trial court’s rulings on these issues, as required by MCR 7.210(B)(1)(a), constitutes waiver of these issues. This Court is unable to review the trial court’s decision because the court’s order does not contain a sufficient basis for review. *Anderson*, *supra* at 535; *Butt*, *supra* at 323.

C. Evidence of Fault

Plaintiff also contends that, at trial, the court erred by excluding evidence of fault. This Court reviews a trial court’s ruling regarding the admission of evidence for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 160; 693 NW2d 825 (2005). An abuse of

discretion occurs if the decision is so palpably and grossly violative of fact and logic that it evidences “a perversity of will, a defiance of judgment, or the exercise of passion or bias.” *Id.*

It is well-settled that a court may consider fault as a factor in determining spousal support. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003); *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003). During discovery, plaintiff sought to depose Sue Brown because plaintiff alleged that defendant had an affair with Brown during their marriage. At trial, plaintiff did not seek to admit evidence regarding Brown and, instead, attempted to establish fault by introducing evidence that defendant had an affair with another woman, Victoria Roberts. Indeed, at trial, plaintiff denied and abandoned her prior allegation regarding an affair with Brown and only sought to present evidence involving Roberts. The trial court declined to allow the evidence because plaintiff provided no prior notice to defendant of her intent to offer evidence concerning Roberts. It was not an abuse of discretion for the trial court to exclude evidence regarding Roberts because of plaintiff’s failure to provide notice to defendant prior to trial.

Plaintiff asserts that the trial court abused its discretion by failing to rule on defendant’s pretrial motion to quash the deposition of Brown and by failing to allow evidence of fault regarding Brown. However, because, at trial, plaintiff denied any allegation that defendant had an affair with Brown, the court’s failure to rule on defendant’s motion was inapposite and its decision not to admit evidence regarding Brown was not an abuse of discretion.

Affirmed in part and reversed in part.

/s/ Henry William Saad

/s/ Brian K. Zahra

/s/ Bill Schuette